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C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 000073

SIPDIS

NEA/ARP, NEA/I

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SUBJECT: GOK SEEKS RELEASE OF MNF-I DETAINEE ABDELRAHMAN AL-BATHALI

REF: 08 KUWAIT 499

Classified By: Political Counselor Pete O'Donohue for reasons 1.4 b and d

¶1. (C) The GOK requested via January 25 dipnote the release from MNF-I detention in Baghdad of Kuwaiti citizen Abdelrahman Al-Bathali. Al-Bathali (ISN: US9IZ-157245CI), captured in Iraq by MNF-I on January 30, 2004, is the son of UNSCR 1267 designee Mubarak Mishkhas Al-Bathali. On January 27, a Kuwaiti criminal court found the elder Al-Bathali guilty of "inciting youth to jihad (combat) activities against foreign forces in Iraq" and sentenced him to three years in prison (septel).

¶2. (C) In Post's November 10, 2008 dipnote (coordinated with Embassy Baghdad), we laid out specific steps required of the GOK prior to Abdelrahman Al-Bathali's release. They include:

-- Submittal of a "Special Release Request" to MNF-I CG Ray Odierno
-- Bio data on Al-Bathali
-- Justification for Al-Bathali's release
-- Detailed explanation of what steps will be taken to ensure that Al-Bathali does not resume further criminal or hostile acts.

¶3. (C) Begin Text of GOK January 25 diplomatic note:
(Unofficial Translation)

Extremely Confidential and Urgent (GOK Classification)

25 January 2009

Complimentary Opening.

In reference to the Embassy's diplomatic note No. 825 on 10 November 2008 regarding the citizen Abdulrahman Al-Bathali, who is detained in Iraq, and the U.S. Forces, intention to release him on condition of tangible guarantees provided by the Kuwaiti side that he is unable to conduct terrorist movements again and threaten the U.S. Forces, we would like to inform you that the State of Kuwait seeks to retrieve its citizen Abdulrahman Al-Bathali and requests that U.S. Forces release him to Kuwaiti custody. The competent authorities will abide by the following procedures once the U.S. Forces release and deliver him to the Kuwaiti authorities:

-- Surveillance operations:

Once Abdulrahman Al-Bathali is delivered to Kuwait, he will undergo surveillance operations by the competent authorities of the State of Kuwait. They will follow up on his activities and monitor his actions locally and observe whether he performs any suspicious activity. The Ministry of Interior will prepare the arrest reports on the above person, investigate any crimes or attempted crimes he may have committed, and then refer him to the competent authorities to initiate action according to the standard procedure regarding this issue.

-- Banned from Travel:

The above person's name will be added to a "banned-from-travel" list as soon as he is received and referred to the judicial authorities until court orders regarding him are issued according to the legal rulings in this regard. His name and personal information will be passed to the authorities with which Kuwait has security and intelligence links such as the GCC countries, and to other friendly countries if requested.

-- Trial of the detainee:

The detainee will be delivered to Kuwait, and once received, will undergo investigation and trial procedures as set by the Kuwaiti criminal law and criminal trial and procedure law.

-- Appealing the rulings that the detainee is innocent:
If the detainee is brought before court and the Kuwaiti law courts find him not guilty, the General Attorney has the right to appeal the ruling at the High Court of Appeal.

-- Detention of the detainee during the trial period:

According to Articles 144 and 145 of the criminal trial and procedure law, detention of the detainee during the trial period is controlled by the competent court which is trying the defendant. Article 69 gives the Attorney General the authority to detain the defendant for three weeks from the time he is arrested, and this detention period is renewable by order of the court judge. Once the defendant is referred to the competent court, his detention continues pending the trial without renewal, unless the court decides otherwise according to the above two articles.

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-- Not issuing a passport for the above person: (No further information)

Complimentary Closing.

End Text.

¶4. (C) Comment: Although the GOK has not fulfilled all of the USG procedural requirements for a release set out in our November 10 diplomatic note, the Kuwait response is a first step in a dialogue. The capacity of the GOK to monitor and control Al-Bathali (and/or any other former Guantanamo or similar detainees) remains highly questionable. In past instances, individuals "banned from travel" have left the country legally following successful law suits against the GOK to recover their passports. We will continue to seek a more detailed explanation of GOK plans to detain and monitor Al-Bathali should he be released. End Comment.

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